

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JAMES C. CAVANAUGH

Plaintiff,

**ANSWER**

vs.

Civil Action No.:  
09-CV-0422-A

NATIONAL RECOVERY SOLUTIONS, LLC

Defendant.

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The defendant, National Recovery Solutions, LLC, by its attorneys, DAMON & MOREY LLP, for its answer to Plaintiff's Complaint, alleges upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 4, 7, 8, 9, 10, 11 and 14 of plaintiff's Amended Complaint.
2. Admits those allegations as contained in paragraphs 3, 5 and 6 of plaintiff's complaint.
3. Denies those allegations as contained in paragraphs 2, 12, 13, 15, 16, 18A, 18B, 18C and 19 of plaintiff's complaint.
4. In answering paragraph 17 of the Plaintiff's Amended Complaint, this answering Defendant repeats and realleges each and every admission or denial of the allegations contained in the foregoing paragraphs referred to therein, with the same force and effect as though fully set forth herein.
5. Denies each and every other allegation of the complaint not hereinbefore specifically admitted or otherwise denied.

**AFFIRMATIVE DEFENSES:**

6. Plaintiff has failed to state a claim upon which relief may be granted.
7. Plaintiff is not entitled to an award of attorneys' fees under any theory of law.
8. Defendant National Recovery Solutions, LLC pleads the affirmative defense of setoff.
9. Defendant pleads the affirmative defense of waiver and estoppel.
10. Defendant pleads that even if the events alleged in the Complaint are true, they were the result of bona fide error(s).

**WHEREFORE**, this answering defendant demands judgment dismissing the complaint in its entirety; dismissing the complaint in its entirety based upon plaintiff's assumption of risk; that the plaintiffs' damages, if any, be diminished in the proportion to which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the alleged damages, together with the costs and disbursements of the action.

Dated: Buffalo, New York  
June 23, 2009

**DAMON & MOREY LLP**

By: /s/ John P. Ford  
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TO: LAW OFFICES OF KENNETH R. HILLER, ESQ.  
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**CERTIFICATE OF SERVICE**

JOHN P. FORD, ESQ., certifies pursuant to CPLR §2106, that on the 23<sup>rd</sup> day of June, 2009, he served a true copy of the attached Answer by first class mail on plaintiff's counsel at his address as indicated below:

LAW OFFICES OF KENNETH R. HILLER, ESQ.

Kenneth R. Hiller, Esq.

*Attorneys for Plaintiff*

6000 North Bailey Avenue, Suite 1A

Amherst, NY 14226

*/s/ John P. Ford*

John P. Ford, Esq. (2216)